

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 415 of 1989

with

CRIMINAL APPEAL No 450 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

DOSTMOHMAD JUSAB KACCHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 415 of 1989
MR G RAMAKRISHNAN for the appellants
Mr.S.R.Divetia for Respondent No. 1
2. Criminal AppealNo 450 of 1989
Mr.S.R.Divetia, LAPP for the appellant
MR RD DAVE for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 25/02/97

ORAL JUDGEMENT (N.J.Pandya,J.)

As many as 27 accused came to be charged for an incident which happened on 27-1-1988 at about 12-noon near the forest office at Sasan Sanctury. They were tried by the learned Sessions Judge, Jamnagar in Sessions Case No.64 of 1988. At the end of the trial by Judgment dated 30th May 1989, the learned Judge convicted accused nos.1,5 & 20 and the rest were acquitted. Of them, accused nos.1 & 20 came to be convicted for offence under Sec.302 and accused no.5 for offence under Sec.307.

2. All the 27 accused were charged for offences under Secs.147,148,149,302, 307 read with Sec.149 IPC and individually also in connection with some of the accused. When only three accused have been convicted, obviously charge of unlawful assembly would not survive and that is why the learned trial Judge had fallen back on the alternative charge, as framed namely the accused being individually answerable for their individual action and that is how, accused nos.1 and 20 came to be convicted for offence under Sec.302 and accusedno.5 for offence under Sec.307.

3. Admittedly, one Allarakha was shot by a forest guard Mr.Der. He was shot dead because forest personnel found him actually stealing wood illicitly from the forest area and there being overall strictness in this regard by the forest personnel in general and forest officers in particular, persons indulging in this activity were resenting the same. There were also complaints of scotching and the aforesaid strictness on the part of the Forest Department was, therefore, not liked by any one, who was involved in this sort of activity.

4. The spark which led to the explosion at 12.00 noon was fired literally when said Allarakha came to be shot dead by a fire arm. There was crowd of about 200 people who attacked the residential quarters of the Forest Department Employees, target being the said Forest Guard Mr.Der. It has come on record that the crowd had gone to his house and laid a seige and was on the verge of burning down their house with their occupants.

5. Learning this, the Forest Officer Mr.Sharma with Mr.Visana, Raggar and others decided to go there. Mr.Sharma had also instructed his staff to get themselves armed and accordingly they had come with their rifle.

6. Mr.Sharma and his companions tried to reason it out with the excited crowd, but obviously to no avail. This is hardly surprising because the intervention of Mr.Sharma and his companions was preceded by an incident in which their driver Kishore was seriously injured by some members of this crowd. He was attacked at a nearby place of cycle repair. He was being taken to hospital and this had prompted said Mr.Sharma and his companions to get their staff members armed and that is how one Najar Mohmad brought a rifle, one Ramesh also brought a rifle and so did one Rajpara. However, this precaution did not help the forest officials in any manner. The crowd turned frenzy into anger and in the melee Mr.Sharma was wounded very seriously for which the learned Judge held accused no.5 responsible. Visan, who lost his life, was also attacked by accused no.1 and 20 leading to his death.

7. It has been clearly stated by all the eye witnesses, who, obviously would be forest Department Personnel including the injured witness Mr.Sharma that the crowd was shouting and in that crowd the convict accused and others were carrying arms. Arms were used by those accused who came to be convicted. That is clearly made out from the depositions of witness Arvindkumar Patel, p.w.5, who has lodged the complaint, One Champak Trivedi Exh.52, Pravinsingh, incharge Mamlatdar Exh.55, who has been examined to prove the dying declaration exh.55 and the statement at exh.57. Mr.Ashok Sharma, the injured, has been examined at Exh.59 and wireless guard Mr.Ramesh has been examined at Exh.60. Mahendrakumar has been examined at Exh.65, but he has not supported the prosecution. Obviously therefore, an argument was advanced by L.A. Mr.Ramkrishnan for accused no.1 and Mr.K.D.Dave for Rajesh D.Dave for accused nos.2 & 3 that independent witnesses have not been brought by the prosecution and the witnesses examined have not supported the case of the prosecution at all. However, the striking feature of the entire case is that the accused had not even remotely suggested that the forest Department personnel, who had deposed against the accused had any personal enmity whatsoever with any of the accused.

8. Otherwise also, when an injured witness deposes about his own injury, it is to be taken that he would not allow the real culprit to go and falsely implicate somebody else. The incident happened at 12-noon. It is nobody's case that the witness could not have seen the incident. Strikingly enough, it is also not suggested

that the accused were strangers to the injured witnesses or other witnesses who have deposed in favour of the prosecution.

9. The three convict accused were said to be carrying arms i.e. knives and the injuries as per the medical evidence are capable of being caused by the weapon that they were shown to be carrying. The learned Judge, in our opinion, therefore, has rightly sifted the evidence produced before him in respect of all the 27 accused and having accepted the defence that against 24 accused no case is made out, the remaining 3, in our opinion, for the reasons stated in the judgment are correctly convicted. Therefore, no interference from our side is called for. Criminal Appeal No.415 of 1989 filed by the convicts-appellants is therefore, dismissed.

10. So far as the acquittal appeal filed by the State is concerned, for the aforesaid reasons, we agree with the order of acquittal passed by the learned trial Judge in respect of 24 acquitted accused and therefore, no interference is called for from our side. The State appeal i.e. Cr.Appeal No.450 of 1989 is therefore, dismissed.

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